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9 ACTIMAGINE CORP. and GRP II L.P.

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12 **UNITED STATES DISTRICT COURT**
13 **NORTHERN DISTRICT OF CALIFORNIA**
14

15 OLIVIER VIALANEIX,

16 Plaintiff,

17 vs.

18 ACTIMAGINE CORP. and GRP II L.P.

19 Defendants.

Case No.: CV 08-0497 MHP

**DEFENDANT ACTIMAGINE
CORPORATION'S ANSWER TO
PLAINTIFF'S FIRST AMENDED
COMPLAINT**

DEMAND FOR JURY TRIAL

20 Comes now Defendant ACTIMAGINE CORPORATION (hereinafter "Actimagine" or
21 "Defendant") in answer to Plaintiff's First Amended Complaint for Damages ("Complaint"),
22 states and alleges as follows:

23 1. Answering Paragraph 1 of the Complaint, Defendant lacks sufficient information
24 and belief to enable it to respond to the allegations contained within Paragraph 1, and therefore
25 denies each and every allegation contained therein.

26 2. Answering Paragraph 2 of the Complaint, Defendant admits that Actimagine is a
27 corporation authorized to do business and doing business in the State of California, and that
28 GRP II L.P. is a limited partnership with its principal place of business in Los Angeles, California.
Except as so admitted, the allegations contained therein are denied.

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1 3. Answering Paragraph 3 of the Complaint, Defendant admits that Plaintiff is a
2 citizen of a foreign state (i.e., country), that Defendants are citizens of the United States, that there
3 is complete diversity of citizenship, that the amount in controversy is in excess of \$75,000, and
4 that jurisdiction and venue are proper in this Court. Except as so admitted, the allegations
5 contained therein are denied.

6 4. Answering Paragraph 4 of the Complaint, the allegations contained therein are
7 denied.

8 5. Answering Paragraph 5 of the Complaint, Defendant lacks sufficient information
9 and belief to enable it to respond to the allegations contained within Paragraph 5, and therefore
10 denies each and every allegation contained therein.

11 6. Answering Paragraph 6 of the Complaint, the allegations contained therein are
12 denied.

13 7. Answering Paragraph 7 of the Complaint, the allegations contained therein are
14 denied.

15 8. Answering Paragraph 8 of the Complaint, the allegations contained therein are
16 denied. Further, Defendant avers that it never hired Plaintiff subject to the contract he describes
17 and that it informed him on or about June 14, 2007 that it would not employ him as its Chief
18 Financial Officer.

19 9. Answering Paragraph 9 of the Complaint, the allegations contained therein are
20 denied.

21 10. Answering Paragraph 10 of the Complaint, the allegations contained therein are
22 denied.

23 11. Answering Paragraph 11 of the Complaint, the allegations contained therein are
24 denied.

25 12. Answering Paragraph 12 of the Complaint, Defendant incorporates by reference
26 paragraphs 1 through 11 of this Answer as though set forth in full.

27 13. Answering Paragraph 13 of the Complaint, the allegations contained therein are
28 denied.

1 14. Answering Paragraph 14 of the Complaint, the allegations contained therein are
2 denied.

3 15. Answering Paragraph 15 of the Complaint, the allegations contained therein are
4 denied.

5 16. Answering Paragraph 16 of the Complaint, the allegations contained therein are
6 denied.

7 17. Answering Paragraph 17 of the Complaint, the allegations contained therein are
8 denied.

9 18. Answering Paragraph 18 of the Complaint, Defendant incorporates by reference
10 paragraphs 1 through 17 of this Answer as though set forth in full.

11 19. Answering paragraph 19 of the Complaint, Defendant admits that GRP II L.P. is
12 and was separate and distinct from Actimagine, has a close business relationship with Actimagine,
13 involves a close degree of communication and trust, and has a financial interest in Actimagine.
14 Except as so admitted, Defendant denies each and every remaining allegation of that paragraph.

15 20. Answering Paragraph 20 of the Complaint, the allegations contained therein are
16 denied.

17 21. Answering Paragraph 21 of the Complaint, the allegations contained therein are
18 denied.

19 22. Answering Paragraph 22 of the Complaint, the allegations contained therein are
20 denied.

21 23. Answering Paragraph 23 of the Complaint, the allegations contained therein are
22 denied.

23 24. Answering Paragraph 24 of the Complaint, the allegations contained therein are
24 denied.

25 25. Answering Paragraph 25 of the Complaint, the allegations contained therein are
26 denied.

27 26. Answering Paragraph 26 of the Complaint, the allegations contained therein are
28 denied.

1 27. Answering Plaintiff's unnumbered "WHEREFORE" prayer for relief, Defendant
2 denies that Plaintiff is entitled to any of the relief requested therein.

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4 **AFFIRMATIVE DEFENSES**

5 **FIRST AFFIRMATIVE DEFENSE**

6 Plaintiff's Complaint fails to state facts sufficient to constitute claim for relief against
7 Defendant.

8 **SECOND AFFIRMATIVE DEFENSE**

9 While Defendant denies it employed Plaintiff, if it is somehow concluded that Plaintiff was
10 employed by Defendant, Plaintiff's employment was terminable-at will pursuant to Section 2922
11 of the California Labor Code.

12 **THIRD AFFIRMATIVE DEFENSE**

13 To whatever extent Plaintiff allegedly is subject to an employment agreement with
14 Defendant, Plaintiff has failed to perform his obligations thereunder.

15 **FOURTH AFFIRMATIVE DEFENSE**

16 Any actions Defendant undertook that are the subject of the complaint were justified and
17 that the Plaintiff's complaint is therefore barred.

18 **FIFTH AFFIRMATIVE DEFENSE**

19 While Defendant denies that it engaged in the conduct attributed to it by Plaintiff, if it is
20 determined that any such conduct is legally attributable to Defendant, Defendant alleges that the
21 conduct was reasonably and properly based on legitimate business reasons.

22 **SIXTH AFFIRMATIVE DEFENSE**

23 Although Defendant denies that Plaintiff has been damaged in any way, if it should be
24 determined that Plaintiff has been damaged, then Defendant alleges, based on information and
25 belief, that Plaintiff has failed to mitigate his purported damages, and Defendant further alleges
26 that, to the extent any damages could have been mitigated, such sums should be deducted from
27 any award of damages.
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SEVENTH AFFIRMATIVE DEFENSE

Defendant alleges, based on information and belief, that Plaintiff's Complaint is barred by the doctrines of waiver, unclean hands and/or estoppel.

EIGHTH AFFIRMATIVE DEFENSE

Defendant alleges, based on information and belief, that Plaintiff's Complaint is barred by Plaintiff's failure to invoke and/or exhaust administrative and/or contractual remedies (if any contract between the parties is deemed to exist).

NINTH AFFIRMATIVE DEFENSE

Defendant alleges, based on information and belief, that to the extent Plaintiff seeks unspecified punitive damages, such claim and damages are contrary to the due process clauses and other clauses of the U.S. and California Constitutions.

WHEREFORE, Defendant prays for the following relief:

1. That Plaintiff's Complaint be dismissed in its entirety;
2. For attorneys' fees, costs of suit herein; and
3. For such other and further relief as the court deems just and proper.

Dated: July 23, 2008

THELEN REID BROWN RAYSMAN & STEINER LLP

By /s/ Ellen M. Papadakis
Robert A. Dolinko
Ellen M. Papadakis
Attorneys for Defendants
ACTIMAGINE CORP. and GRP II L.P.

Defendant hereby demands trial by jury.

Dated: July 23, 2008

THELEN REID BROWN RAYSMAN & STEINER LLP

By /s/ Ellen M. Papadakis
Robert A. Dolinko
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Attorneys for Defendants
ACTIMAGINE CORP. and GRP II L.P.